UNITED ENGINEERS LTD. v. COLLECTOR OF LAND REVENUE & ANOR. STRAITS TRADING LTD. v. COLLECTOR OF LAND REVENUE & ANOR.

[O.C.J. (Lai Kew Chai J.) July 15, 1982]
[Singapore – Originating Summons Nos. 392 & 644 of 1981]

Land Acquisition – Compulsory acquisition by Port Authority of plaintiff's land – Whether null and void – Scope of s. 21(1) of the Port of Singapore Authority Act (Cap. 173) – Land Acquisition Act (Cap. 272), s. 5.

Land Acquisition – Scope of s. 21(1) of Land Acquisition Act (Cap. 272).

The plaintiffs, United Engineers and Straits Trading sought in two separate applications for a declaration from the High Court that the compulsory acquisition of the plaintiffs' land was null and void and therefore should be set aside.

United Engineers were the owners of three pieces of land in the District of Telok Blangah with a total area of 7,966.1 square metres. The Straits Trading owned a larger piece which had the total area of 37,644.4 square metres. In 1972 Straits Trading on being asked by the Port of Singapore Authority (the P.S.A.) indicated that they had no wish to sell their land to the P.S.A. They applied for planning permission to develop the land for commercial use but it was not given because the land was zoned residential and later because it was required for a public purpose.

On February 4, 1982 the Collector awarded $3,012,700 to Straits Trading. Their claim for the land was $30,410,175. United Engineers had claimed $10 million as the current market value of their property with vacant possession. The Collector's award was some $2 million. The plaintiffs contended that section 21(1) of the P.S.A. Act (Cap. 173) should be read as a proviso or exception to section 5 of the Land Acquisition Act (Cap. 272) and that Parliament by enacting it had intended to protect landowners by requiring every statutory body, which is created under legislation containing a provision similar to the said section 21(1) to carry out, as a pre-condition, a *bona fide* attempt to acquire the land by private treaty before the President of the Republic of Singapore would acquire it compulsorily under section 5 and other provisions of the Land Acquisition Act.

Held: (1) on a true and natural construction of section 21(1) of the P.S.A. Act in the context of the scheme of the Land Acquisition Act, Parliament plainly did not intend to require the P.S.A. to make a *bona fide* attempt at negotiation to purchase any land it needs for its purposes before compulsory acquisition can be launched under section 5 of the Land Acquisition Act and section 21(1) cannot and is not to be read as a proviso to section 5 of the Land Acquisition Act;

(2) to accept the construction contended for the plaintiffs would do violence to the scheme of compulsory acquisition in Singapore under the Land Acquisition Act;

(3) plainly the words in section 21(1) are merely words descriptive of a state of affairs and are not intended to prescribe a condition precedent with which the P.S.A. has to comply;

(4) the P.S.A. under section 21(1) has to satisfy The President of the Republic of Singapore that the land it requires for its purposes is not available for acquisition by private treaty. If The President thinks fit, compulsory acquisition will be ordered. It is exclusively a matter between the P.S.A. and The President in the course of public administration.

ORIGINATING SUMMONS.

David Widdicombe Q.C. (*A.P. Godwin* with him) for the plaintiffs.

P. Selvadurai for the defendants.

Cur. Adv. Vult.

Lai Kew Chai J.: By two Originating Summons Nos. 392 and 644 of 1981 United Engineers Limited ("United Engineers") and The Straits Trading Company Limited ("the Straits Trading") sought in identical terms a declaration from the High Court that Gazette Notification No. 1997 of May 13, 1981 and all steps of acquisition taken thereafter are null and void insofar as the same affect the compulsory acquisition of the Plaintiffs' land.

The Plaintiffs also sought an order setting aside the said Notification and all steps or actions issued, taken and done in pursuance of the said Notification insofar as they affect the Plaintiffs' land.

There are two Defendants. They are the Collector of Land Revenue and The Port of Singapore Authority.

When Summons No. 392 of 1981 was filed by United Engineers, the First Defendant was described as "Collector of Land Revenue, Port of Singapore Authority". The First Defendant was described as if he was an officer of the Port of Singapore Authority. Not unnaturally, a conditional appearance was entered on behalf of the Collector of Land Revenue of The Republic of Singapore. In the event, United Engineers obtained leave and amended the title of the proceedings by deleting the words "Port of Singapore Authority" from the description of the First Defendant. I would not have mentioned this aspect of the proceedings if it had been a "common or garden run" application to correct a mis-description. As will emerge, this error disclosed the fundamental and underlying misapprehension on the part of United Engineers and, it appears, Straits Trading, who are associated companies, in failing to appreciate that these compulsory acquisitions are carried out under the Land Acquisition Act, Cap. 272 ("the Land Acquisition Act") by The President of The Republic of Singapore in whom the land after acquisition shall vest. The Collector of Land Revenue is an officer of The Republic of Singapore duly appointed by The President of The Republic of Singapore. He was directed by the Commissioner of Lands under section 6 of the Land Acquisition Act to take proceedings for the acquisition of certain parcels of land, including those of the Plaintiffs. Although these parcels were acquired to enable the Port of Singapore Authority to build a massive container terminal and multi-storey warehouse complex, the Collector of Land Revenue is not bound by nor is he concerned with any provisions of the Port of Singapore Authority Act, Cap. 173 ("the PSA Act"). I have underscored the legal separateness of the Collector of Land Revenue from the Port of Singapore Authority because these proceedings had been launched, quite wrongly, as if they were one and the same legal entity.

As the factual matrices giving rise to the two summonses were identical in material particulars, save in one aspect to which I shall return, the two summonses were heard together on February 16 and 17, 1982, after which I reserved judgment.

The material facts are as follows. United Engineers were the owners of three pieces of land in the District of Telok Blangah having the total area of 7,966.1 square metres. The Straits Trading owned a larger piece which had the total area of 37,664.4 square metres. In 1972, Straits Trading on being asked by the Port of Singapore Authority indicated that they had no wish to sell their land to the Port of Singapore Authority. They applied for planning permission to develop the land for commercial use but it

was not given because the land was zoned residential and later because it was required for a public purpose.

By a Government Gazette notification bearing No. 1997 and on May 13, 1981 it was declared that it appeared to The President of The Republic of Singapore that several pieces of land, containing an area of 102,314.1 square metres or thereabouts, including the land belonging to both the Plaintiffs, were needed for the purposes of the Port of Singapore Authority.

In June and September 1981 the Plaintiffs' Solicitors wrote to the Defendants and contended that in view of the failure of the Port of Singapore Authority to enter into negotiations with the Plaintiffs to purchase the land by private treaty as required by sub-section 21(1) of the PSA Act, the purported acquisitions under section 5 of the Land Acquisition Act were invalid. For the purposes of these proceedings it is quite clear that the Port of Singapore Authority did not enter into any negotiation and did not make any attempt at agreement. The correspondence between the Port of Singapore Authority and Straits Engineers in 1972 during which the latter indicated that they had no intention to sell their land was too far removed in point of time to be regarded as an attempt by the Port of Singapore Authority to purchase the land by private treaty.

In September 1981 Straits Trading claimed the sum of $30,410,175 for their land on the basis of its market value with vacant possession. On February 4, 1982 the Collector awarded $3,012,700 under section 10 of the Land Acquisition Act. I was told that United Engineers had claimed some $10 million as the current market value of their property with vacant possession and the Collector's award was some $2 million. The Collector had made both awards based on the valuation under the provisions of sub-section 33(1) paragraph (a) of the Land Acquisition Act (which I will hereafter refer to as "November 30, 1973 value").

It is necessary to consider the provisions of sub-section 21(1) of the PSA Act (hereinafter referred to as "the sub-section"), which read as follows:

"21. (1) – Where any immovable property, not being State land, is needed for the purposes of the Authority and cannot be acquired by agreement, the Authority may request, and the President may, if he thinks fit, direct the acquisition of such property and in such case, such property may be acquired in accordance with the provisions of any written law relating to the acquisition of land for a public purpose and any declaration under any such written law that such land is so needed may be made notwithstanding that compensation is to be paid out of the funds of the Authority, and such declaration shall have effect as if it were a declaration that such land is needed for a public purpose made in accordance with such written law."

The sub-section appears in Part IV of the PSA Act which is described as: "Property and Dockyard Undertakings of the Authority." It appears in a part which *inter alia* confers power on the Port of Singapore Authority. Section 20 and the sub-section of the PSA Act had appeared in its present form since Chapter 208 in 1963. Previous to December 27, 1963, the corresponding words in the antecedent section in the Ports Ordinance were "unable to acquire by agreement".

As at June 1967, which is the relevant date in this case of construction, the legislation which created HDB, PUB, the then University of Singapore contain provisions similar to the sub-section. On the other hand, the legislation which created the People's Association, Singapore Tourist Promotion Board, POSB, National Theatre Trust and the Board of Commissioners of Currency do not contain any provision similar to the sub-section.

After June 1967, the legislation which created the JTC, Urban Renewal Authority, TAS and the NUS contain provisions similar to the sub-section. On the other hand, the legislation which created MAS, Sentosa Development Corporation, National Maritime Board, Singapore Sports Council and the SBC do not contain any provision similar to the sub-section.

If the Plaintiffs' construction of the sub-section is correct, the upshot is that there will be a group of statutory bodies in Singapore which will be obliged to make a *bona fide* attempt at agreement and another group which will not be so obliged.

It is also relevant in construing the sub-section to note that since 1890 the compensation payable for any land compulsorily acquired has not been the current market value of the land concerned but has been what I would describe as the statutory market value. Since the enactment by Act No. 66 of 1973 of sub-section 33(1) paragraph (a) of the Land Acquisition Act, which came into effect on February 8, 1974, the difference between the current market value of land at the time of acquisition and November 30, 1973 value had widened even further. In the circumstances, it is highly unlikely since February 1974 for any negotiations to result in a sale by private treaty of a piece of land required for a public purpose. The gulf is so unbridgeable as to make any negotiation an exercise in futility. I am making this comment to set down the position since February 1974 and in construing the sub-section, I have only looked at the circumstances in June 1967.

For the Plaintiffs it was canvassed before me that the sub-section should and is to be read as a proviso or exception to section 5 of the Land Acquisition Act and that Parliament by enacting it had intended to protect landowners by requiring every statutory body, which is created under legislation containing a provision similar to the sub-section to carry out, as a pre-condition, a *bona fide* attempt to acquire the land by private treaty before The President of The Republic of Singapore would acquire it compulsorily under section 5 and other provisions of the Land Acquisition Act. It is said that read in the way as urged on behalf of the Plaintiffs, the Plaintiffs and landowners would enjoy certain advantages. The Plaintiffs could negotiate with and get from the Port of Singapore Authority a price which might be more generous. They could persuade the Port of Singapore Authority to amend or drop the acquisition. They could avoid the expense and delay of negotiations under the Land Acquisition Act and under the procedure of statutory appeal to the Appeals Board. If there was a condition precedent which the Port of Singapore Authority and other similarly placed statutory bodies had to perform, the question can arise whether the attempt at negotiations in order to be *bona fide* must be conducted by statutory bodies on the basis of the current market value and not November 30, 1973 value which the statutory bodies concerned have to offer.

In my view and on a true and natural construction of the sub-section in the context of the scheme of the Land Acquisition Act, Parliament plainly did not intend to

require the Port of Singapore Authority to make a *bona fide* attempt at negotiation to purchase any land it needs for its purposes before compulsory acquisition can be launched under section 5 of the Land Acquisition Act and the sub-section cannot and is not to be read as a proviso to section 5 of the Land Acquisition Act.

To accept the construction contended for the Plaintiffs would do violence to the scheme of compulsory acquisition in Singapore under the Land Acquisition Act. In this regard, I would refer to the alleged advantages which landowners are supposed to enjoy if the sub-section is construed as imposing a condition precedent.

The alleged advantages had to be stated to see both their far fetched nature and the unreasonable effect of their operation. No statutory body can logically or justifiably offer anything over and above what is payable under the Land Acquisition Act. I ask myself the question: Could Parliament have intended that one group of statutory bodies should pay current market value at the time of acquisition and another group pay November 30, 1973 value? The answer must categorically be in the negative. Plainly, the Plaintiffs' construction of the sub-section would create in Singapore two regimes of acquisition of land for public purposes. Whether one falls under one regime or the other would depend, entirely fortuitously, on which statutory body it is which requires the land for its purposes. No construction of a statutory provision should give rise to such an untenable situation where a distinction is made between two regimes of acquisition of land for public purposes without any, let alone any rational or justifiable, difference.

I am also of the considered opinion that the wording of the sub-section is most inapt if Parliament had intended to impose a pre-condition on the Port of Singapore Authority. The words "and cannot be acquired by agreement" are plainly words of description. They are plainly too oblique and the sub-section wholly inadequate if they were intended to impose a condition precedent. They do not spell out who is to begin the negotiation, how and within what period it is to be conducted and concluded, what is the basis as regards the price. These and a host of other questions are left at large.

To accede to the Plaintiffs' contention would amount to an implied amendment of section 5 of the Land Acquisition Act by the sub-section. No logical inconsistency between the two provisions has been shown. It is neither imperative nor necessary and I decline to make law which is solely the right and responsibility of Parliament.

I am accordingly satisfied that plainly the words in the sub-section are merely words descriptive of a state of affairs and are not intended to prescribe a condition precedent which the Port of Singapore Authority has to comply.

Read in this light, the Port of Singapore Authority under the sub-section has to satisfy The President of The Republic of Singapore that the land it requires for its purposes is not available for acquisition by private treaty. If The President thinks fit, compulsory acquisition will be ordered. It is exclusively a matter between the Port of Singapore Authority and The President in the course of public administration. Seeing that the sub-section and the Land Acquisition Act is not dealing with the same subject of compulsory acquisition and are not in conflict, it must obviously follow that neither the maxim *generalia specialibus non derogant* ("general things do not derogate from special things") nor the other maxim *generalibus specialia derogant* ("special things derogate from general things") is of any relevance in these proceedings. This is the true, natural and reasonable construction which does not do violence to the scheme of compulsory acquisition of land in Singapore for public purposes.

For all these reasons, the two summonses are dismissed with costs.

Applications dismissed

Solicitors: *Godwin & Co.; Rodyk & Davidson.*